

EDWARD T. DWYER

IBLA 78-302

Decided November 30, 1978

Appeal from decision of the Utah State Office, Bureau of Land Management, declaring Iron Nos. 1-50 lode mining claims null and void ab initio. AD-17-78 (Utah).

Affirmed.

1. Mining Claims: Lands Subject to—Mining Claims: Relocation—Mining Claims: Withdrawn Lands

Mining claims on land subsequently withdrawn from mineral entry are not subject to relocation, despite failure of the original locators to do assessment work, because relocation by another party is of necessity adverse to the prior location.

APPEARANCES: Edward T. Dwyer, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Edward T. Dwyer has appealed from the February 8, 1978, decision of the Utah State Office, Bureau of Land Management, (BLM) declaring the Iron Nos. 1 through 50 lode mining claims null and void ab initio. The claims were located on October 13, 1968, and are situated in T. 11 S., R. 22 E., Salt Lake meridian, Uintah County, Utah. The State Office decision noted that these lands were temporarily withdrawn from lease or other disposal (including non-metalliferous mineral entry) by Executive Order No. 5327, 53 I.D. 127 (1930). On September 13, 1968, these lands were withdrawn from entry under the United States mining laws by PLO 4522, 33 FR 14349, 14352 (September 24, 1968).

[1] Appellant states that claims were originally staked by Charles Sands and a partner in 1966. Because the annual assessment

work for the year 1967-68 was not filed by September 1, 1968, appellant asserts that the claims were subject to relocation. However, regardless of the validity of the original claims on the date of the withdrawal, mining claims on land subsequently withdrawn from mineral entry are not subject to relocation after the effective date of the withdrawal, even though the original locators have failed to do assessment work. Lyman B. Crunk, 68 I.D. 190 (1961); see Wilbur G. Hallauer, 36 IBLA 144 (1978); Ray L. Virg-in, 33 IBLA 354 (1978). This result occurs because a relocation by A on land located by B is of necessity adverse to B's prior location.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joseph W. Goss
Administrative Judge

We concur.

Frederick Fishman
Administrative Judge

James L. Burski
Administrative Judge

